

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of

Federal-State Joint Board on Universal Service

CC Docket No. 96 - 45

Centennial U. S. V. I. Operations Corp.

Petition for Waiver of Section 54.314(d)(1) of the
Commission's Rules

WAIVER – EXPEDITED ACTION REQUESTED

**CENTENNIAL USVI OPERATIONS CORP.
PETITION FOR WAIVER OF SECTION 54.314(D) OF
THE COMMISSION'S RULE**

Centennial USVI Operations Corp. (“Centennial”), pursuant to Sections 1.3 and 1.925 of the Commission’s rules,¹ respectfully petitions the Commission for an expedited waiver of the July 1, 2006 filing deadline set forth in Section 54.314(d)(1) of the Commission’s rules. Approval of this waiver request will allow Centennial to receive universal service support in the United States Virgin Islands (“USVI”) beginning as of December 2, 2006, the effective date of the decision of the USVI Public Services Commission (“VIPSC”) designating Centennial as an Eligible Telecommunications Carrier (“ETC”).²

¹ See 47 C.F.R. § 1.3; § 1.925. Pursuant to § 1.1105 of the rules, no filing fee applies to this request.

² *In re ETC Petition – Centennial USVI Operations Corp. Pursuant to Act No. 6977*, PSC Docket No. 574 (effective as of December 2, 2006; issued February .

The USVI presents several unique challenges in the provision of telecommunications services. First, although the territory constitutes a single study area, it consists of three main islands, with the two most populous – St. Thomas and St. John – separated by more than 40 miles of open ocean. Second, much of the territory – particularly on St. Thomas and St. John – is mountainous and undeveloped. Moreover, in economic terms, the population of the USVI is challenging to serve as well, with a per-capita annual income only about half that in the mainland United States.

Centennial has been designated a ETC for the USVI, and now requires immediate access to universal service funding in order to begin a prompt build out of its wireless network in the unserved and underserved areas of the USVI. Because of the USVI's mountainous terrain, many valleys and communities – including resorts and other businesses – lack wireless coverage. In addition, the incumbent local exchange carrier (“ILEC”) is currently struggling from the effects of its former owner's financial misdeeds, which have strained the ILECs ability to make capital improvements to its network.³ With the ILEC's financial status unstable, and no competing carrier currently receiving universal service funding support, the state of telecom-

³ The ILEC is the Virgin Islands Telephone Company, or Vitelco, now known as “Innovative.” Vitelco's parent company, as well as its owner/controlling person, Jeffrey Prosser, are in bankruptcy following a failure to pay hundreds of millions of dollars of rural development loans. This situation is, to Centennial's knowledge, entirely unique within the universe of incumbent carriers who receive universal service funding. *See* <http://www.onepaper.com/stthomasvi/?v=d&i=&s=News:Local&p=1203139294>; http://www.virginislandsdailynews.com/index.pl/article_home?id=17621123.

munications service in the USVI is unsatisfactory and detrimental to the territory's well being.

Because of the USVI's challenging geography and demographics, it is economically unviable for Centennial to attempt an expansion of its USVI network in the absence of universal service funding. In light of the factors noted above and Centennial's commitment to extend service to areas insufficiently served, each day that Centennial is delayed in receiving its authorized funding results in a day-for-day delay in Centennial's efforts to provide effective and reliable service to the people of the Virgin Islands. For this reason, Centennial respectfully, but urgently, asks that this request be granted on an expedited basis, as soon as possible.

BACKGROUND

Centennial began seeking ETC status in the USVI in late 2004 or early 2005. At that time, Centennial was informally advised that the VIPSC did not have a mechanism for assessing Centennial for the costs of evaluating Centennial's fitness to be designated as an ETC, and, therefore, was not in a position to conduct such an evaluation.⁴ As a result, Centennial asked for a letter stating that the VIPSC would not perform such an evaluation. It re-

⁴ The VIPSC is funded by means of general assessments on public utilities in the USVI, as well as by "docket-specific" assessments on entities with specific matters before that body. Moreover, because the VIPSC is comprised of part-time Commissioners, much of its actual work is handled by outside consultants and contractors – who must be paid for the work that they do. As a result, if the VIPSC cannot collect funds from an entity in a matter before it, in practical terms that matter cannot proceed.

ceived a letter from a VIPSC representative stating that the VIPSC did not have jurisdiction over Centennial.

Based on the letter just noted, Centennial filed a petition with this Commission to be designated as an ETC for the USVI. This Commission never made any decision with respect to this petition. On February 12, 2008, Centennial filed a letter with this Commission withdrawing it.

As a result of the long pendency of Centennial's petition here, Centennial approached the VIPSC to determine what steps, if any, could be taken for the VIPSC, rather than this Commission, to act on Centennial's ETC petition. Specifically, during the second half of 2006, Centennial's representatives discussed with VIPSC representatives a proposal under which Centennial would voluntarily agree to submit to the VIPSC's jurisdiction (including, specifically, jurisdiction to be assessed the reasonable costs of conducting a review of the ETC petition and subsequent annual reviews). As a result of those meetings, and in response to directions from the then Chairman of the VIPSC, Centennial submitted a petition to be designated an ETC by the VIPSC to its representative on December 2, 2006 – more than 18 months after Centennial's original petition filed with this Commission. At that time, and based on discussions with VIPSC representatives, Centennial anticipated that its petition would be granted promptly.

For various reasons, however, that application remained pending. On several occasions, including December 15, 2006, March 23, 2007, April 23, 2007, and November 2007, Centennial's petition was listed for consideration on the VIPSC's agenda, and, although it was discussed at those meetings, it was not acted upon. In addition, in August 2007, representatives of the VIPSC testified before the Senate of the Virgin Islands Legislature that Centennial's petition was complete and would be voted on in the near future.

The VIPSC's jurisdiction extends to all intrastate "telephone service," which, in Centennial's view, encompassed such authority over wireless carriers as had not been removed from states under 47 U.S.C. § 332(c). However, because some doubt had been expressed about the VIPSC's ability to designate an ETC, the USVI Legislature, on December 6, 2007, passed Bill No. 27-0099, which contained new Section 47 of Chapter 30 of the Virgin Islands Code. This bill, which the governor signed on December 22, 2007, confirmed the VIPSC's authority to designate ETCs. Thereafter, the VIPSC held public hearings on Centennial's petition, and voted, on February 22, 2008, to designate Centennial an ETC in the USVI.

Given the specific circumstances surrounding the timing of its action – including the fact that Centennial had, by the time of the hearings, been seeking ETC designation in one forum or another for three years – the VIPSC specifically addressed the question of an appropriate effective date for Centennial's ETC designation. Based on the evidence and arguments submitted

to its Hearing Examiner, the VIPSC found and expressly ruled that the effective date of Centennial’s eligibility to receive high-cost universal service support pursuant to Section 54.307 of the Commission’s rules (which provides for support to competitive ETCs)⁵ was December 2, 2006, the date on which Centennial submitted its petition to the VIPSC. The VIPSC, in other words, properly took steps to ensure that after proceedings that began more than 18 months after Centennial’s initial ETC petition to this Commission, and that took more than a year to complete (for reasons completely unrelated to the substantive merits of the petition),⁶ neither Centennial nor the citizens of the USVI would or should be deprived of appropriate high-cost universal service support arising from the USVI Legislature’s last minute changes to, and clarification of, the VIPSC’s regulatory powers, particularly when these changes and clarifications did not affect Centennial’s actual qualification to receive support.

Section 54.314 of the Commission’s rules sets forth the requirements for the state certification of rural carriers. States that desire universal service high-cost support for rural ETCs must file an annual certification by October 1 with the Universal Service Administrative Company (“USAC”) and this Commission, stating that all high-cost support received by rural ETCs within the state will be used “only for the provision, maintenance, and up-

⁵ See 47 C. F. R § 54.307

⁶ In fact, counting the FCC’s inaction on Centennial’s petition, the delay in improving the USVI’s telecommunications infrastructure was almost three years.

grading of facilities and services for which support is intended” (hereinafter referred to as a “Section 54.314 Certification”). Section 54.314 establishes a quarterly filing timetable that determines when an ETC may begin receiving support during the calendar year.⁷ Universal service support will be provided to an ETC in a state only to the extent the state has filed the requisite certification.

On February 26, 2008, the VIPSC filed a Section 54.314 Certification with this Commission and USAC certifying Centennial as eligible to receive federal universal service funds beginning December 2, 2006.⁸ However, because of the filing deadlines set out in Section 54.314(d) of the Commission’s rules, Centennial will be denied universal service support until the third quarter of 2008 unless the Commission grants this waiver request.

As set out below, a waiver of the July 1, 2006 filing deadline will allow Centennial to receive universal service support beginning as of the effective date of its ETC designation for the USVI. Such action would be consistent with Commission precedent, consistent with the Commission’s well established competitively neutral universal service policy, and would serve the public interest.

⁷ Pursuant to Section 54.314(d), a state’s certification must be filed by October 1 of the preceding calendar year for the eligible carriers to receive support beginning in the first quarter of the subsequent calendar year. If the October deadline is missed, the certification must be filed by January 1 for support to begin by the second quarter, by April 1 for support to begin in the third quarter and by July 1 for support to begin in the fourth quarter.

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REQUEST FOR WAIVER

Section 1.3 of the Commission's rules provides the Commission with discretion to waive application of any of its rules upon a showing of good cause. In addition, Section 1.925(b)(3) provides for waiver where it is shown that:

- (i) The underlying purpose of the rule(s) would not served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁹

Federal courts also have recognized that “a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such a deviation would serve the public interest.”¹⁰ Accordingly, the Commission “may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”¹¹

The Commission established the quarterly Section 54.314 Certification filing timetable to facilitate USAC's ability to report universal service support projections to the FCC. The timetable in Section 54.314 was not intended to create a process that disadvantages carriers receiving ETC design-

⁹ See 47 C. F. R. §1.925(h)(3).

¹⁰ *Northwest Cellular Telephone Co. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990); see also *WAIT Radio v. FCC*, 418 F. 2d 1153, 1157 (D.C. Cir 1969), *cert. denied*, 409 U.S. 1027 (1972).

¹¹ *Northeast Cellular Telephone Co.*, 897 F. 2d at 1166 (citing *WAIT Radio*, 418 F. 2d at 1159).

nation subsequent to one of the quarterly filing certification deadlines, and was not intended to interfere with state commission's substantive determination of the appropriate effective date of an ETC designation. The July 1, 2006 filing deadline fell four months prior to the December 2, 2006 effective date of Centennial's ETC designation by the VIPSC. In these circumstances, it is clear that the VIPSC could not have met, under any circumstances, the normal deadline for Centennial to receive support beginning at the end of 2006. Receipt of such support is, however, explicitly intended by the VIPSC as its order and effective date make clear.¹²

The Commission has previously concluded that strict application of the Section 54.314 Certification filing timetable is inconsistent with the public interest and undermines the Commission's goals of competitive neutrality when a carrier is denied universal service support it is otherwise entitled to receive. In granting similar waiver requests to competitive ETCs, the Commission has acknowledged that strict application of the certification filing timetable set forth in Section 54.314(d) may have the effect of penalizing newly designated ETCs. For that reason, the Commission has determined that it would be "onerous" to require an ETC to forego universal service sup-

¹² Centennial does not seek USF payments for the period October 1 to December 31, 2006. It simply seeks to receive payments beginning with the effective date of its ETC designation.

port solely because it was designated as an ETC after a certification deadline.¹³

In this case, it would be especially onerous to deny the people of the Virgin Islands and Centennial receipt of universal service funding as of December 2, 2006, the effective date established by the VIPSC, simply because that date occurred after the July 1, 2006 filing deadline.¹⁴ Centennial's circumstances are generally similar to the circumstances of several competitive ETCs that have been granted waiver of the filing deadlines set out in Section 54.314.¹⁵ Denying support to Centennial, a competitive ETC, based upon the timing of its ETC designation would undermine the Commission's goals of competitive neutrality.

Moreover, the Section 54.314 Certification filing timetable has the unintended consequence with respect to Centennial in the Virgin Islands of delaying universal support well beyond the effective date of its designation. As noted earlier, there is a compelling need for telecommunications investment in the Virgin Islands. The ILEC finds itself in serious financial distress and is unable to fund needed capital projects because of the misdeeds of its former

¹³ RFB Cellular, Inc. Petition for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations, Order, 17 FCC Rcd 24387, para. 6 ("RFB Waiver Order"); Guam Cellular and Paging, Inc. Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations, Order, CC Docket No. 96-45, DA 03-1169 (rel. April 17, 2003) ("Guam Waiver Order"); Western Wireless Corporation Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations, Order, CC Docket No. 96-45, DA 03-2364 (rel. July 18, 2003) ("Western Wireless Order").

¹⁴ See Western Wireless Order, para. 7.

¹⁵ See RFB Waiver Order, Guam Cellular Order, Western Wireless Order.

owner. The difficult terrain of the territory has resulted in significant parts of the public infrastructure – such as airports, marine terminals, hotels and small communities – suffering inadequate and unreliable wireless service. The nearly three-year delay in the consideration of Centennial’s ETC application¹⁶ should not penalize the people of the Virgin Islands whose need for improved telecommunications infrastructure is evident and urgent.

For all these reasons, granting a waiver of the filing deadline set forth in Section 54.314(d) of the rules, which will allow Centennial to receive universal service support beginning on December 2, 2006, the effective date of the VIPSC’s designation of Centennial as an ETC, is appropriate and consistent with Commission precedent, consistent with the Commission’s statutory goal of preserving and advancing universal service, and is in the public interest.

REQUEST FOR EXPEDITED TREATMENT

Centennial urgently requests expedited treatment of this waiver request. The Virgin Islands and Centennial should not be deprived of substantial universal service support as a result of the unintended timing problem created by the filing deadlines of Section 54.314(d). Denying Centennial support for 2007 under these circumstances is contrary to the statutory goal

¹⁶ Centennial filed its original application the FCC on April 28, 2005. At the time it was withdrawn on February 8, 2008, the FCC had taken no action on it. Centennial filed a petition for designation with the VIPSC on December 2, 2006. Uncertain of its jurisdiction, the VIPSC did not approve the petition until it had clarified its authority. The petition was approved on February 26, 2008.

of promoting the availability of universal service to consumers in high-cost and rural areas.

Indeed, the impact of the Commission's non-substantive, administrative rules is particularly harsh given the serious state of telecommunications infrastructure in the United States Virgin Islands. In connection with its ETC designation, Centennial has made commitments to extend its wireless network to poorly served and unserved areas even though, in normal economic terms, there is no reason to do so given the high cost of these projects that will serve relatively small populations. Only the receipt of universal service funds makes it viable for Centennial to undertake these improvements to extend its network. As a result, this is not a situation in which receipt of USF support will merely defray the high costs of an existing level of service, valuable as that function may be in many cases. Instead, this is a situation in which reliable telephone service is dependent upon the receipt of USF funding. In these circumstances, not only is a waiver of the Commission's rules fully justified, it is also critically important that the waiver be granted on an expedited basis so that Centennial may immediately begin the planning and implementation of the required network expansion.

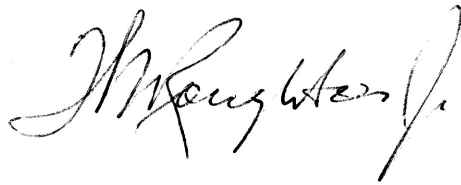
CONCLUSION

For the reasons stated herein, Centennial respectfully requests, pursuant to Sections 1.3 and 1.925 of the FCC's rules, a waiver of Section

54.314(d) of the Commission's rules. In light of the unique factual setting of this request – specifically, Centennial's commitment to extend wireless service to those parts of the Virgin Islands infrastructure currently lacking adequate wireless service – Centennial also seeks expedited consideration of its waiver request.

Respectfully submitted,

Centennial USVI Operations Corp.

A handwritten signature in black ink, appearing to read "W. Roughton, Jr.", written in a cursive style.

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